

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

NARCISO RAMIREZ,  
  
Petitioner,  
  
v.  
  
MARK S. AGUILAR, et al.,  
  
Respondents.

No. 1:23-cv-01538-KES-SKO (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS  
(Doc. 5)

ORDER DISMISSING PETITION FOR WRIT  
OF HABEAS CORPUS AND DIRECTING  
CLERK OF COURT TO ENTER JUDGMENT  
AND CLOSE CASE

ORDER DECLINING TO ISSUE  
CERTIFICATE OF APPEALABILITY

Petitioner Narciso Ramirez is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 2, 2023, the assigned magistrate judge issued findings and recommendations to dismiss the petition as premature. Doc. 5. The findings and recommendations were served upon all parties and contained notice that any objections thereto were to be filed within twenty-one (21) days after service. *Id.* at 3. On November 17, 2023, Petitioner timely filed objections to the findings and recommendations. Doc. 8.

1 In accordance with 28 U.S.C. § 636 (b)(1), the Court has conducted a de novo review of  
 2 the case. Having carefully reviewed the entire file, including Petitioner's objections, the Court  
 3 concludes that the magistrate judge's findings and recommendations are supported by the record  
 4 and proper analysis. Petitioner's objections state concerns with his ongoing state criminal  
 5 prosecution but do not address the magistrate judge's findings and recommendations. Petitioner's  
 6 underlying state criminal case is still pending, the petition is premature, and Petitioner still has  
 7 avenues of relief available in the state courts. For these same reasons, the Court also denies  
 8 Petitioner's motion to supplement petition, filed on March 25, 2024.

9 In addition, the Court declines to issue a certificate of appealability. A state prisoner  
 10 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of  
 11 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537  
 12 U.S. 322, 335-336 (2003). The controlling statute in determining whether to issue a certificate of  
 13 appealability is 28 U.S.C. § 2253, which provides as follows:

14 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a  
 15 district judge, the final order shall be subject to review, on appeal, by the court of  
 appeals for the circuit in which the proceeding is held.

16 (b) There shall be no right of appeal from a final order in a proceeding to test  
 17 the validity of a warrant to remove to another district or place for commitment or  
 18 trial a person charged with a criminal offense against the United States, or to test  
 the validity of such person's detention pending removal proceedings.

19 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an  
 appeal may not be taken to the court of appeals from—

20 (A) the final order in a habeas corpus proceeding in which the  
 21 detention complained of arises out of process issued by a State  
 court; or

22 (B) the final order in a proceeding under section 2255.

23 (2) A certificate of appealability may issue under paragraph (1) only if the  
 24 applicant has made a substantial showing of the denial of a constitutional  
 right.

25 (3) The certificate of appealability under paragraph (1) shall indicate which  
 26 specific issue or issues satisfy the showing required by paragraph (2).

27 If a court denies a petitioner's petition, the court may only issue a certificate of  
 28 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.

1 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that  
2 “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have  
3 been resolved in a different manner or that the issues presented were ‘adequate to deserve  
4 encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting  
5 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

6 In the present case, the Court finds that Petitioner has not made the required substantial  
7 showing of the denial of a constitutional right to justify the issuance of a certificate of  
8 appealability. Reasonable jurists would not find the Court’s determination that Petitioner is not  
9 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to  
10 proceed further. Thus, the Court declines to issue a certificate of appealability.

11 Accordingly,

- 12 1. The findings and recommendations issued on November 2, 2023 (Doc. 5) are  
13 adopted in full;
- 14 2. The petition for writ of habeas corpus is dismissed without prejudice;
- 15 3. Petitioner’s motion to supplement petition (Doc. 12) is denied;
- 16 3. The Clerk of Court is directed to enter judgment and close the case; and
- 17 4. The Court declines to issue a certificate of appealability.

18 This order terminates the action in its entirety.

19  
20  
21 IT IS SO ORDERED.

22 Dated: April 3, 2024

  
UNITED STATES DISTRICT JUDGE